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No. 59

In the Supreme Court of the United States

OCTOBER TERM, 1942

CLAUDE R. WICKARD, SECRETARY OF AGRICULTURE OF THE UNITED STATES, ET AL., APPELLANTS

v.

ROSCOE C. FILBURN

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO

BRIEF FOR THE APPELLANTS ON REARGUMENT

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This Court has ordered reargument—

> limited to the question whether the Act, insofar as it deals with wheat consumed on the farm of the producer, is within the power of Congress to regulate commerce.

The wheat marketing quota provisions of the Agricultural Adjustment Act of 1938, as amended, do not regulate the consumption of wheat on the farm. Those provisions, through the establishment of quotas (sufficient in the aggregate to meet 130 percent of the estimated national demand) for all wheat before it is used for any purpose and the

requirement that wheat in excess of quotas be stored if penalties are to be avoided,[1] determine how much of the national supply of wheat is available interchangeably for marketing and other purposes to fill the total demand. The question which we feel to be presented, therefore, is not whether Congress can regulate consumption on the farm, but whether, as a means of regulating the amount of wheat marketed and the interstate price structure, Congress has the power to control the total available supply of wheat, including, of course, that which is consumed on the farm.

ARGUMENT

THE WHEAT PROVISIONS OF THE AGRICULTURAL ADJUSTMENT ACT ARE A VALID EXERCISE OF THE FEDERAL COMMERCE POWER

Factual background.—The purpose of the Agricultural Adjustment Act of 1938 (52 Stat. 31), as revealed in Sections 2 and 331 (7 U. S. C., Secs. 1282, 1331), was to insure a "balanced flow" of basic agricultural commodities in interstate and foreign commerce, with accompanying fair prices to the farmer and consumer. Excessive and deficient supplies in such commodi-

[1] Appellee's brief at the last Term stated that (p. 9): "Wheat farmers, under the provisions of the Act as amended on May 26, 1941, are denied the privilege of storing their wheat, any part of it, without paying the penalty of 49 cents a bushel on all of the excess production." This is incorrect. Paragraph (3) of the amendment of May 26, 1941, 55 Stat. 203, 7, U. S. C. (Supp. I) Sec. 1340 (3), provides expressly that penalties shall be paid only "upon failure to store or deliver to the Secretary."

ties—corn, wheat, cotton, tobacco, and rice[1]—are declared to affect both the orderly marketing and the price of the commodities in interstate commerce. The Act is a preventive measure designed to "minimize recurring surpluses and shortages of wheat in interstate and foreign commerce" (Section 331) by maintaining adequate reserve supplies and providing for an adequate flow of wheat and wheat products.

The accuracy of these legislative findings cannot be seriously questioned. The corroborative facts are summarized at pp. 12–18 of the Government's brief at the original argument. The record shows that wheat is a vital and important subject of interstate commerce (R. 49–66), and that an excessive supply, "made up of production and carry-over," forces prices down (R. 67) and may congest transportation facilities so as to require the establishment of embargoes on interstate shipments (R. 51). The large world surplus for 1941 resulted in a price upon the world market of approximately 40¢ per bushel, as contrasted with a return of $1.16 for farmers in this country cooperating in the wheat program (R. 71).

Approximately 78 percent of the wheat grown in 1940 was sold (R. 53). The remainder was used as seed or feed on the farm, or ground at mills or exchanged for flour for farm household consumption. The amount of wheat used for seed in recent

[1] Peanuts were included by subsequent amendment (55 Stat. 88, 7 U. S. C. (Supp. I), Secs. 1357, 1359).

years has ranged from a low of 73 million bushels in 1939–1940 to a high of 97 million bushels in 1936–1937 (R. 68). Most of this is grown on the farm where used but a substantial amount is purchased on the market. Between 1935–1936 and 1940–1941 the amount purchased for seed ranged from 8,636,000 bushels to 24,623,000 bushels and has averaged something over 13 million bushels.[3] The amount of wheat consumed as livestock feed on the farm where grown has ranged from 28 million bushels in 1925–1926 to 174 million in 1931–1932 (R. 68). But in addition, substantial quantities of wheat are purchased commercially for feed; the amount has varied from a low of 11,466,000 bushels in 1940–1941 to a high of 35,417,000 in 1938–1939, the average for the last six years being about 22 million bushels.[4] The amount consumed as food by persons on the farm where grown has in recent years stayed consistently between 11 and 16 million bushels.[5] The total amount used as food in the United States has, since 1930–1931, ranged from 450 to 494 million bushels.[6] The wheat consumed by farmers as seed, feed, and food is thus drawn both

[3] These figures are obtained, partly by computation, from tables published in *The Wheat Situation* (Bureau of Agricultural Economics, Department of Agriculture), February 1942, p. 11; id., May 1942, p. 13. See also United States Department of Agriculture, *Agricultural Statistics*, 1941, p. 20.

[4] *Ibid.*

[5] *Ibid.*

[6] *Ibid.*

from their own farms and from the commercial markets.

It is further important to note that, as set forth in the stipulation of facts (R. 50), the "diversified disposition of the farm production of wheat and the various methods of marketing make it difficult accurately to account for the actual amount, as well as the final disposition, of an individual farmer's wheat production."

Legislative background.—The original 1938 Act provided for the imposition of marketing quotas in years of excessive total supply, the total supply being the amount available for market, including both the carry-over and the estimated production. Section 301 (b) (16) (A) (B). For all of the commodities except corn, the quota system was applied only to products actually marketed. As to corn, it was recognized from the beginning that since almost eighty-five percent of the field corn grown in the commercial corn-producing states moved into commerce in the form of livestock or livestock products (H. Rep. No. 1645, 75th Cong., 2d Sess., p. 24), any attempt to control the marketing of corn would have to include the amount which was marketed as an "ingredient" of poultry and livestock which, or the products of which, were marketed. Section 301 (b) (6) (B), 52 Stat. 40.

Quotas first became operative for tobacco and cotton. Since these crops are produced only for market, and, being neither seed nor food, are not consumed on the farm, the establishing of quotas

for marketing alone sufficed to control the entire supplies of these commodities. Moreover, these commodities proceed to market through a relatively small number of outlets, the tobacco warehouse and the cotton gin, with the result that it is not too difficult to keep track of the disposition of the entire supply through a regulation the incidence of which falls at the time of marketing.

It soon became apparent that wheat and corn should be treated "alike with respect to the feeding of poultry or livestock for market" (S. Rep. No. 1668, 76th Cong., 3d Sess., p. 2), even though, of course, a far greater proportion of corn than of wheat is used for such purposes. The definition of marketing for wheat was accordingly amended to correspond to that for corn. 54 Stat. 727, amending Section 301 (b) (6). Although the program was still regarded and described by Congress as one for the establishment of marketing quotas, the economic inseparability of corn, wheat, and livestock[1] thus resulted in provision for quotas which applied to corn and wheat consumed by livestock on the farm as well as that sold.

This amendment of the definition of marketing brought within the quota system a substantial por-

[1] This interrelationship is demonstrated by the latest Department of Agriculture Appropriation Act (Pub. No. 674, 77th Cong., 2d Sess., approved July 22, 1942), which provides (p. 34) "that not more than one hundred and twenty-five million bushels of wheat may be sold for feeding purposes" and "that no grain [including wheat] shall be sold for feed at a price less than 85 per centum of the parity price of *corn* at the time such sale is made." (Italics supplied.)

tion, although not all, of the unmarketed portion of the total wheat supply. When, in 1941, it seemed that the wheat surplus would, for the first time, become large enough to require the establishment of quotas,* the Department of Agriculture, with the experience gained in administering other programs, became apprehensive as to its ability to administer and enforce a program in which it was required to know not only the acreage and normal yield but the actual amount produced and marketed from each farm.* In an effort to make the statute workable, Congress found it necessary to make both corn and wheat programs, like those for cotton and tobacco, apply to the entire supply. Furthermore, application of the quota system to the entire supply provided a much more effective and equitable means of attaining the basic congressional objectives,—stabilization of the interstate flow through storage of surpluses for use in time of shortage, and the maintenance of a reasonable level of prices.

The Act in its present form provides that each farmer shall store, turn over to the Secretary of Agriculture, or pay a penalty on, his "farm marketing excess"—an amount consisting of the normal production, or the actual production *if the producer shows it to be less,* of the acreage in

* The yearly supply of corn since the Act was passed has not been such as to bring quotas into effect.

* The practical difficulties are described in greater detail, *infra*, pp. 31–37.

excess of his farm acreage allotment.[10] The Act thus applies to wheat as soon as it becomes a part of the supply available for sale as well as for farm use. Although the plan is still described by Congress as one for the establishment of marketing quotas, the ineffectiveness of the original scheme as applied to a commodity a substantial portion of which is not marketed has caused the incidence of the program to move backward from the point of actual marketing to the point at which the wheat becomes available for market. The impact of the plan thus falls not merely upon the wheat sold but upon the entire supply.

The purposes of the statute, however, remained the same. We submit that Congress may seek to attain those objectives, which are plainly legitimate under the commerce clause,[11] by any appropriate means, and that it is immaterial whether

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[10] See Joint Res. of May 26, 1941, 55 Stat. 203, 7 U. S. C. (Supp. I) Sec. 1340. The amendment of December 26, 1941, 55 Stat. 872, 7 U. S. C. (Supp. I) Sec. 1340 (12) provided that the excess should in any event not be larger than the amount by which actual production on the farm "exceeds the normal production of the farm wheat-acreage allotment, if the producer establishes such actual production to the satisfaction of the Secretary."

[11] The "supply" and the "price" of goods entering into interstate commerce have been held to be of legitimate congressional concern. See *Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295, 310; *Standard Oil Co. (Indiana)* v. *United States*, 283 U. S. 163, 169; cf. *Mulford* v. *Smith*, 307 U. S. 38; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1; *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381.

in doing so its regulation is confined to interstate and intrastate marketing [12] or is extended to cover other intrastate transactions.[13] Congress "may choose the means reasonably adapted to the attainment of the permitted end, even though they involve control of intrastate activities." *United States* v. *Darby*, 312 U. S. 100, 121; *United States* v. *Wrightwood Dairy Co.*, 315 U. S. 110, 119; *Oklahoma* v. *Atkinson Co.*, 313 U. S. 508, 526.

We shall show that application of the quota system to the entire supply of wheat, including that consumed on the farm, was appropriate and

[12] The original marketing quota system for wheat, like that for tobacco, applied to products marketed both interstate and intrastate. The intrastate marketing of tobacco was held subject to federal regulation because of the need for making the regulation of that sold interstate effective. *Mulford* v. *Smith*, 307 U. S. 38, 47; *Currin* v. *Wallace*, 306 U. S. 1, 11.

[13] Although the Act controls the disposition of the supply of wheat after it is produced, it does not regulate the production. It contemplates the storage of the excesses for years of drought or shortage, and thus does not penalize bringing them into existence. A farmer may grow as much as he pleases without penalty, so long as he is willing to store the excess so that it will not be available for marketing during the marketing year.

We do not wish to imply, however, that achievement of the congressional purpose through production control would be invalid. This Court has frequently recognized that production, like other intrastate activities, is subject to congressional control when appropriate to the effective regulation of interstate commerce. *E. g.*, *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1; *United States* v. *Darby*, 312 U. S. 100, 121; *Cloverleaf Co.* v. *Patterson*, 315 U. S. 148.

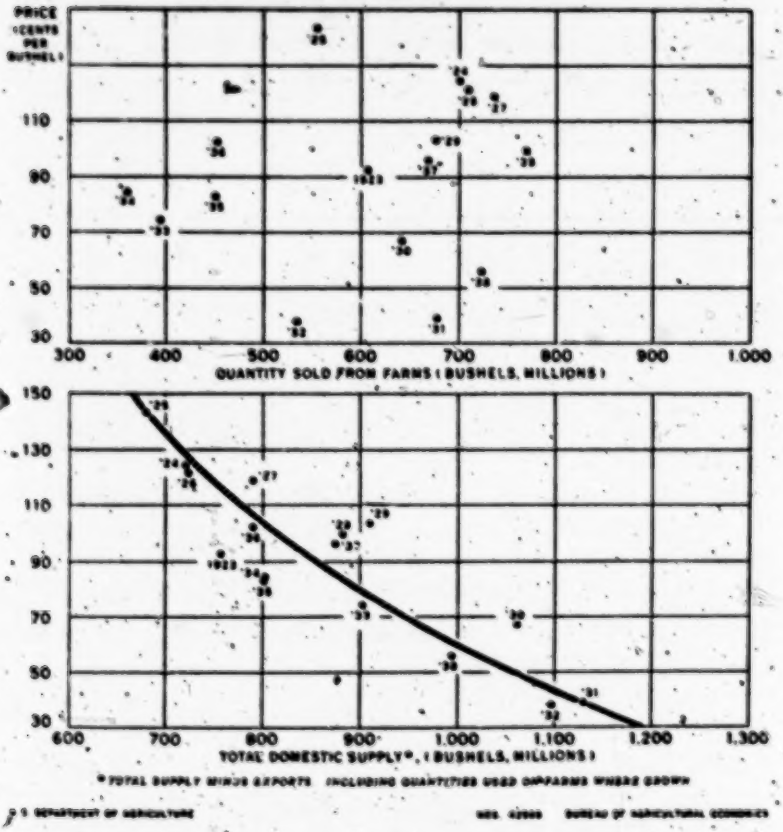
reasonably adapted to the accomplishment of the congressional objectives for the following reasons: (1) the interstate price structure is substantially and directly affected by the total supply available for marketing, and not merely by the amount which is marketed; (2) the total supply is an integrated whole available for all uses, and the amount consumed on the farm is not economically separable; and (3) a fair system of allocation based upon the quantity of wheat marketed would be ineffective, because of unavoidable difficulties in administration and enforcement. Any one of these reasons, and certainly any or all of them in combination, is sufficient to make the plan adopted a valid exercise of the federal commerce power.

1. *The effect of the supply upon the interstate price structure.*—A primary object of Congress in enacting the Agricultural Adjustment Act was to keep an excessive supply of a crop from forcing down prices to levels ruinous to the farmer. As the record shows (R. 67), the price of wheat is directly affected by the supply. And the supply which affects the price is not the amount which happens to be sold, but the total quantity which can be—even if it is not—thrown upon the market. The supply which is significant, in so far as the workings of the law of supply and demand are concerned, is thus the total supply, consisting of the amount harvested in each year

plus the carry-over from prior years (R. 67). Indeed, it is precisely when the supply exceeds the demand [14] and hence will not all be sold, that prices are depressed.

WHEAT: PRICE RECEIVED BY FARMERS RELATED TO QUANTITY SOLD FROM FARMS AND TO TOTAL DOMESTIC SUPPLY*, UNITED STATES, 1923-38

(YEAR BEGINNING JULY.)



The operation of this basic economic principle upon the marketing of wheat clearly appears from

[14] The relatively inelastic demand for wheat for flour is not responsive to the price (R. 68), and thus will not grow sufficiently to consume the supply as prices go down.

the accompanying graphs.[15] The upper chart shows that there is no correlation at all between farm prices and the amount of wheat *sold*. In contrast, the lower chart demonstrates the definite relationship between farm prices and the total domestic supply; as the supply goes up prices go down.

Although in the long run the price helps to determine the supply, in any single year the supply reacts upon the price, since the crop is planted before the price is known. The demand for wheat is relatively inelastic (R. 68). Accordingly, the price is largely determined by the total supply available for all purposes, including the amount which is ultimately consumed on the farm.

The total supply available for marketing rather than the amount actually marketed by the farmers

[15] These graphs are prepared from statistics published in United States Department of Agriculture, *Agricultural Statistics*, 1941, pp. 10, 20, 22. The figures as to farm prices are also found at R. 81, and the figures for total domestic supply may be computed from R. 79–80. The table upon which the graphs are based is as follows:

Year beginning July—	Price received by farmers	Quantity sold from farms	Total domestic supply*	Year beginning July—	Price received by farmers	Quantity sold from farms	Total domestic supply*
	Cents per bushel	*Million bushels*	*Million bushels*		*Cents per bushel*	*Million bushels*	*Million bushels*
1923	92.6	607	757	1931	39.0	679	1,129
1924	124.7	700	721	1932	38.2	536	1,097
1925	143.7	556	682	1933	74.4	395	902
1926	121.7	708	724	1934	84.8	561	803
1927	119.0	737	791	1935	83.2	452	801
1928	99.8	770	883	1936	102.6	453	791
1929	103.6	677	909	1937	98.3	668	876
1930	67.1	641	1,061	1938	56.1	726	994

*Total supply minus exports. Including quantities used on farms where grown.

thus has a direct and important, if not indeed a controlling, effect upon the price structure. Since the prices affected are predominantly interstate, it follows that the supply directly and substantially affects interstate commerce.

This Court has held that the prices of commodities which move across state lines are an intrinsic part of interstate commerce, and that the direct regulation of such prices is a regulation of interstate commerce itself. *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381, 393–394; *United States* v. *Rock Royal Co-operative, Inc.*, 307 U. S. 533; cf. *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1, 40. Congress unquestionably has the power to control such prices directly so that they will not be too low (*United States* v. *Rock Royal Co-operative, Inc., supra; Sunshine Anthracite Coal Co.* v. *Adkins, supra*) or too high (Interstate Commerce Act, Sec. 15; *Tagg Bros. & Moorhead* v. *United States*, 280 U. S. 420; cf. *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U. S. 575). But this power is not limited to the *fixing* of interstate rates and prices. It extends to the control of practices which affect such prices. Indeed, outside of the Interstate Commerce Act, federal legislation in this field long consisted almost entirely of statutes designed to control practices affecting prices rather than prices themselves.

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The Sherman Act is, of course, the outstanding example. Under that statute combinations or contracts which restrain trade by controlling interstate prices are unlawful. *United States* v. *Trenton Potteries Co.*, 273 U. S. 392; *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150. Whether the object of the combination is to raise prices, as is usually the case, or to stabilize prices, or to lower prices (as in purchasing from farmers) is of no consequence. *United States* v. *Socony-Vacuum Oil Co., supra; Swift & Co.* v. *United States*, 196 U. S. 375. And it has long been established that it is entirely immaterial whether the particular conduct which affects the interstate price is itself interstate or intrastate. *United States* v. *Patten*, 226 U. S. 525 (corner on New York Cotton Exchange); *Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295 (coal strike with the object of affecting interstate wages and prices); *Standard Oil Co. (Indiana)* v. *United States*, 283 U. S. 163, 169 (agreement concerning manufacture tending to fix prices); *Swift & Co.* v. *United States*, 196 U. S. 375; *Local 167* v. *United States*, 291 U. S. 293, 297. "It is the 'effect upon interstate commerce,' not 'the source of the injury,' which is 'the criterion of congressional power.'" *Schechter Poultry Corp.* v. *United States*, 295 U. S. 495, 544; *Second Employers Liabilty Cases*, 223 U. S. 1, 51; *United States* v. *Wrightwood Dairy Co.*, 315 U. S. 110, 121. The power "'to foster, protect, control, and

restrain' * * * may be exerted to protect interstate commerce 'no matter what the source of the dangers which threaten it'." *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 37; *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, 570; *Second Employers Liability Cases, supra*, at 47, 51. The nexus between interstate and intrastate may be "economic" as well as "physical." *Federal Trade Commission* v. *Bunte Bros.*, 312 U. S. 349, 358 (dissent); *United States* v. *Wrightwood Dairy, supra.*

Certainly if Congress may prohibit the producers of a commodity from restricting the supply in order to raise interstate prices when such an increase is harmful, it must have power to compel them to do so when a price increase will be beneficial. Cf. *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381, 396. The relationship of the subject regulated to commerce is the same in each case; whether lower or higher prices are to be the goal is a matter for the legislature to decide. Cf. *Nebbia* v. *New York*, 291 U. S. 502, 537.

Closely in point are the cases in which this Court has sustained the validity of the Packers and Stockyards and Grain Futures Acts, both of which affirmatively regulated intrastate practices affecting the interstate price structure of agricultural commodities. *Stafford* v. *Wallace*, 258 U. S. 495; *Chicago Board of Trade* v. *Olsen*, 262

U. S. 1. The *Olsen* case is particularly pertinent here, both because it involved an act the object of which was to protect wheat prices against the harmful effects of speculative manipulations and because the transactions actually regulated were plainly intrastate. The Grain Futures Act regulated contracts for sales of grain for future delivery, most of which, this Court said (p. 36), "do not result in actual delivery but are settled by offsetting them with other contracts of the same kind." Most of the sales did not relate to wheat actually moving in commerce.[16] They were between buyers and sellers on the floor of the Chicago Board of Trade.[17] Nevertheless, they affected the price at which grain moving in commerce was sold throughout the country. Thus the question was not one of regulating the movement or the sale of a commodity in interstate commerce, but of regulating purely local activity which Congress had found affected the price of commodities moving in interstate commerce and caused price fluctuations which burdened and obstructed interstate commerce.

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[16] The record in the case at bar shows that over a ten-year period the volume of trade in wheat futures averaged approximately twelve times the number of bushels produced (R. 53, 44–45, 62).

[17] Such contracts are between members of the exchange as principals. See *Dickson* v. *Uhlmann Grain Co.*, 288 U. S. 188, 192–193.

This Court sustained the regulation, declaring (pp. 39–40):

> * * * Manipulations of grain futures for speculative profit * * * exert a vicious influence and produce abnormal and disturbing temporary fluctuations of prices that are not responsive to actual supply and demand and discourage not only * * * justifiable hedging but disturb the normal flow of actual consignments. * * *
>
> * * * * *
>
> * * * If a corner and the enhancement of prices produced by buying futures directly burden interstate commerce in the article whose price is enhanced, it would seem to follow that manipulations of futures which unduly depress prices of grain in interstate commerce and directly influence consignment in that commerce are equally direct. The question of price dominates trade between the States. *Sales of an article which affect the country-wide price of the article directly affect the country-wide commerce in it.* * * * [Italics supplied.]

Certainly, if Congress can regulate intrastate sales of grain futures because of their effect upon the price of wheat, it should have the power to take cognizance of the supply of wheat which, in a much more fundamental sense, determines the price. And, since the supply which affects the price is the total supply, including both the wheat which is marketed and that which ultimately is

consumed on the farm, the total supply may be taken into consideration in framing federal regulation.

2. *The economic relationship between wheat consumed on the farm and wheat marketed.*— The relationship between the manner in which wheat is consumed and the price structure is such that any exclusion from the quota system of the wheat consumed on the farm would tend to defeat the object of the statute.

The total wheat supply forms a common pool to satisfy all demands. Although some wheat is sure to be kept on the farm and some to be sold commercially, no definite amount or proportion and no particular wheat is predestined for commercial or for farm consumption. The quantity which a farmer will consume on the farm is not determined until after he has compared the price he can obtain for his wheat with the price he will have to pay for competing commercial products which will meet his requirements.

The farmers' demand for wheat is a part of the total demand, to be satisfied out of the total supply; whether he uses his own wheat or buys it commercially depends largely upon comparative prices. In general, the more wheat is consumed on the farm where grown the less will be purchased by farmers commercially. Thus, the relationship between wheat sold commercially and that consumed on the farm may be said to be essentially competitive.

Furthermore, if an excessive proportion were consumed on the farm where grown—as would be the case if only wheat actually marketed were subject to quotas—the farmers' demand for commercial wheat or wheat products would probably decline accordingly. This reduction in market demand would have substantially the same effect upon the market and the price structure as an equivalent increase in supply. As a result, if a market surplus exists, it is not likely to be substantially reduced by increasing a farmer's consumption of his own wheat.[18] Wheat consumed on the farm thus could not be regarded as insulated from the market or as excluded from the supply which affects wheat prices if it were excluded from the quota system.

This can be demonstrated by considering the three ways in which wheat is consumed on the farm. The relatively small quantity of wheat used directly in the household of the producer—from 11 to 16 million bushels annually (see p. 4, *supra*)—is used by the farmer in place of bread or flour bought commercially. If wheat consumed at home were exempt from the farmer's quota, he would be tempted to increase the amount ground

[18] The total quantity eaten or seeded by farmers is not likely to be increased by the existence of a surplus available for farm use only. This would not be the case to the same extent for wheat fed to livestock, if farmers were able, or were induced, to increase the total quantity of livestock, or to use wheat instead of other feeds.

into flour for home use, and the market demand for bread and flour would be reduced to that extent.[19]

The situation as to wheat used as seed or feed is somewhat more complex, but not essentially different. Many farmers, of course, use their own wheat for seed purposes. Others, however, purchase seed through commercial channels (see p. 4, *supra*), either because their own seed would produce an inferior quality of grain, or because weather conditions, pests, or other factors might have rendered their wheat unsuitable for seed purposes. If the quota system did not apply to wheat consumed on the farm of the producer, farmers in the latter class who could possibly do so would seed their own wheat instead of buying seed on the market. This would reduce the market demand at the expense of the farmer whose wheat would otherwise have been sold for seed.

The quantity of wheat fed to livestock on the farm is determined to a large extent by the relationship between wheat prices and the price of alternative feeds, as well as by the price of livestock (R. 68). Farmers either use their own

[19] Although the amount of their own wheat eaten by farmers is quite small, it might increase to substantial proportions if all wheat farmers were induced to use their wheat in this manner as far as possible by the exemption of wheat so consumed from marketing quotas. As has been pointed out, this would not necessarily increase the total quantity of wheat eaten by farmers, but would decrease the amount purchased on the market.

wheat, corn, or other grain as feed, or purchase feed on the market. (See p. 4, *supra*.) Such feed may consist of wheat in its natural state, or bran or middlings (which are byproducts produced in grinding wheat into flour), or mixtures of wheat with other grains in commercial preparations. Since corn and wheat can both be used as feed, and since corn is the crop grown primarily for such purposes, the amount of wheat so used depends at least as much on the factors affecting the consumption of corn as on those relating solely to wheat.[20] In large part because of this relationship, the Agricultural Adjustment Act was amended in 1939 and 1941 so as to contain identical provisions for corn and wheat.[21]

With these qualifications, it is nevertheless true, both as to wheat and corn jointly and wheat separately, that the greater the amount used as feed on the farm, the smaller is likely to be the quantity of commercial feed sold. Here too, the failure to include within quotas wheat consumed on the farm of the producer would expand such consumption, decrease commercial demands, and leave uncontrolled the surplus on the market at which the statute was directed.

That Congress may regulate the totality of interstate and intrastate activities when they are so related that the regulation of the interstate alone

[20] See p. 6, *supra*.

[21] See pp. 6–7, *supra*.

would be ineffective or when the persons subject to the interstate regulation would otherwise suffer discrimination is, of course, plainly established. This has been recognized in cases where the portions of the commodity destined for intrastate and interstate use were physically inseparable (*Currin* v. *Wallace*, 306 U. S. 1) or difficult to segregate (*United States* v. *New York Central R. R. Co.*, 272 U. S. 457, 464); where exemption of the intrastate might cause physical injury to the interstate (*Southern Ry. Co.* v. *United States*, 222 U. S. 20 (Safety Appliance Act)); where the exemption of the intrastate would harm those engaged in interstate transactions by depriving them of business through the force of competition (*Shreveport Case*, 234 U. S. 342; *United States* v. *Wrightwood Dairy Co.*, 315 U. S. 110). See also pp. 37–43, *infra*. Regulation of labor relations and working conditions for all employees of an integrated business organization producing both for interstate and intrastate commerce has been upheld because of the impracticability of separating the employees working on the products destined for intrastate distribution (*Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board*, 303 U. S. 453; *United States* v. *Darby*, 312 U. S. 100, 117). And when Congress has sought to regulate an industry which is predominantly interstate, its power has been sustained even as to the intrastate aspects of the industry's activities if, unregulated, they

might impose an economic burden on the industry as a whole. Thus, *Colorado* v. *United States*, 271 U. S. 153, sustained the power of the Interstate Commerce Commission to authorize the abandonment of an intrastate branch line even in so far as its intrastate traffic was concerned; the financial burden of continuing the intrastate traffic was regarded as lessening the ability of the carrier to serve interstate commerce. See, also, *Railroad Commission of Wisconsin* v. *Chicago, B. & Q. R. R. Co.*, 257 U. S. 563; *Railroad Commission* v. *Southern Pacific Co.*, 264 U. S. 331; *Texas & Pacific Ry. Co.* v. *Gulf, Colorado and Santa Fe Ry. Co.*, 270 U. S. 266; *Florida* v. *United States*, 292 U. S. 1.

Many of the above cases demonstrate that the power to control the intrastate aspects of interstate industries is not limited to industries engaged in transportation. In *Stafford* v. *Wallace*, 258 U. S. 495, the Court declared (258 U. S., at 518–519):

> The application of the commerce clause of the Constitution in the *Swift Case* was the result of the natural development of interstate commerce under modern conditions. It was the inevitable recognition of the great central fact that such streams of commerce from one part of the country to another which are ever flowing are in their very essence the commerce among the States and with foreign nations which historically it was one of the chief purposes of the Constitution to bring under national

> protection and control. This court declined to defeat this purpose in respect of such a stream and take it out of complete national regulation *by a nice and technical inquiry into the non-interstate character of some of its necessary incidents and facilities when considered alone and without reference to their association with the movement of which they were an essential but subordinate part.* [Italics supplied.]

In the *Stafford* case the Court upheld regulation of the stockyards because of their essential relationship to the movement of commerce in livestock. This principle cannot be regarded as limited to transactions occurring in the middle of the stream or current of commerce. This Court noted in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 36, that the metaphorical reference to the stream or flow of commerce provided a particular but not an exclusive illustration of the protective power of the Federal Government. The Labor Board cases themselves demonstrate that this power extends to transactions preceding the commencement of the interstate movement.

The present case contains many of the features which have been held sufficient to justify the regulation of related interstate and intrastate activities. When the total supply of wheat is available for both marketing and farm consumption, it is impossible to tell either how much or

which wheat is to be consumed on the farm where grown or sold. Cf. *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board*, 303 U. S. 453. Exemption from the quota system of wheat consumed on the farm where grown would give farmers able to exercise a choice between selling their excess wheat or using it on the farm an advantage over those who regularly produce wheat for sale and have little or no use for wheat on the farm. The latter would not only be likely to bear the entire burden of the restrictive program (see p. 29, *infra*), but would also suffer a diminution in the demand for their products. This discrimination in favor of those farmers in a position to refrain from sending wheat into commerce presents a situation akin to that treated in the *Shreveport* and *Wrightwood* cases.

The wheat industry unquestionably is one of the great interstate industries of the Nation; the wheat consumed on the farm, although intrastate when looked at alone, forms an economically inseparable portion of the whole. In the *Olsen* case the Court applied to this very industry the principles enunciated in the *Swift* and *Stafford* opinions. That decision itself may be characterized in the language which it applied to the *Swift* case (262 U. S. 1, at 35):

> * * * That case was a milestone in the interpretation of the commerce clause

> of the Constitution. It recognized the great changes and development in the business of this vast country and drew again the dividing line between interstate and intrastate commerce where the Constitution intended it to be. *It refused to permit local incidents of great interstate movement, which taken alone were intrastate, to characterize the movement as such.* * * * [Italics supplied.]

We submit that these principles, uttered in connection with the wheat industry itself, are plainly applicable to the problem involved in this case, and that the power of Congress to treat the supply of wheat as an integrated whole should be upheld.

3. *Congress is entitled to establish a workable and enforceable quota system.*—The present program of applying the quota system to the entire supply rather than merely to wheat marketed was adopted largely because of (a) the difficulty in establishing a fair method of fixing quotas limited to marketing alone, and (b) the difficulty in administering and enforcing such a plan if marketing quotas were once established. Congress may properly take into account the workability and enforceability of various means of achieving its goal in determining which should be employed. This principle has often been applied so as to permit the control of intrastate activities in order effectively to attain a legitimate interstate objective under the commerce clause. (See pp. 37–43, *infra*.)

(a) *The difficulty in arriving at fair marketing quotas.*—The original 1938 Act provided for determination of a marketing percentage of the national acreage allotment which would produce the amount of the national marketing quota (Section 335 (a)). The national marketing quota was to be the amount equal to the normal year's domestic consumption and exports, plus 30 percent, less estimated carry-over and the estimated amounts to be used on farms as feed and seed (Section 335 (b)). The marketing quota for each farm was to be obtained by applying the marketing percentage to the acreage allotment for that farm, and determining the normal production of that number of acres (Section 335 (c), 52 Stat. 54). If, for example, 70 percent of the national acreage allotment would produce the national marketing quota, 70 percent would become the ratio used in determining the quota for all farms. Under this program the penalty was imposed only when the excess was marketed.

The proportion of his crop which a farmer will market in any particular year depends upon a great number of factors. These include the quality of his wheat, the yield, the weather, the number and kind of livestock and poultry he owns, the market price of such livestock and poultry, the price he can get for his wheat, the price he might have to pay for products used in place of his own wheat, and even the size of his family. Whether

or not he can use his own wheat for seed, for example, depends in large part upon the weather, since in unusually wet or dry years his wheat may be of doubtful quality for that purpose. These factors vary tremendously from farm to farm and from year to year even on the same farm. Some farmers dispose of substantially all of their wheat on the market, while others use widely differing proportions at home."

The establishment of farm marketing quotas by application to all farms of a uniform percentage would affect each farmer differently, depending upon the proportion of his crop which he can consume on his farm. The farmer who would normally not have marketed a greater quantity of wheat than the prescribed marketing percentage would not be required to make any reduction in the amount of wheat sold, or to store any wheat at all. Other farmers, who would normally have marketed more than their quota but who are able to increase the amount consumed on their farms, would also be in a position to avoid the effect of the allotment program. Many of them would use their own wheat in place of wheat or wheat products which they would normally have purchased on the market. The entire economic burden of

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[22] In 1940 the average percentage of the total wheat production that was sold in each state, as measured by value, ranged from 29 in Wisconsin to 90 in Washington (R. 61). The variation must have been much greater for individual farms.

reducing the quantity of wheat to be marketed would fall upon those farmers who could not use their wheat as seed or did not have large enough families or quantities of poultry or livestock to eat it. Indeed, the burden imposed upon such farmers would be enhanced by the curtailment in market demand on the part of farmers who sought to avoid the impact of the marketing-quota program by increasing the quantity consumed on their farms. (See pp. 19–21, *supra*.)

The result would be that the wheat of only those farmers unable to consume more than a certain percentage on their farms would be stored in order to achieve the statutory objective of saving up surpluses for use in time of shortage and thus facilitating the orderly flow of wheat. The beneficial effect of the program in raising prices on the market would, however, be enjoyed by all. All farmers, including those who own a substantial number of hogs to which they customarily feed wheat grown on the farm, would obtain the same advantages from the program on every bushel of wheat sold. A plan which helps all but imposes penalties and storage requirements upon only one group of the persons benefited is not fair or equitable.

Any effort to avoid this comparatively simple but unfair method of determining marketing quotas would require differentiation between farms upon the basis of the amount marketed by

each individual farm. Such a task would be immensely complicated and probably impossible. As has been indicated, the quantity and even the proportion of wheat marketed by a particular farmer varies with the weather, the price of wheat, the comparative price of livestock and feed, and other factors which change from year to year. Accordingly, the amount marketed in a single prior year or a general average based upon a number of years would not provide an accurate basis for determining the quantity to be marketed from each farm in any year in the future.

Furthermore, adequate figures are not available as to the past marketings from individual farms, and such information would be essential to the establishment of quotas based upon farm sales alone. In the absence of records, the collection from every wheat farmer of such information for past years to serve as a foundation for future allotments, would have been an enormously difficult and probably an impossible task. Cf. R. 50. Certainly it could not have been performed in time to permit control of the wheat surplus in existence when the 1941 amendment was enacted.

We think it clear that, since Congress may choose any appropriate means to carry out the powers granted to it (see pp. 43–53, *infra*), it may endeavor to avoid means which are unfair to the persons affected or are administratively impracticable. And its discretion in this respect is not

limited by the fact that the fair and workable plan [33] attains the desired commerce objective through control of intrastate activities. See pp. 37–43, *infra*. The doctrine of the *Shreveport* and *Wrightwood* cases permitting federal regulation of intrastate competitors of persons subject to federal control is closely analogous, for the regulation is extended to the intrastate activity because of the unfairness to the interstate if the former is free from control. A quota system having the effect of completely exempting farmers with home outlets for some of their wheat would similarly be inequitable to and discriminate against the farmers substantially affected by the statutory restrictions.

(b) *The difficulty in administering and enforcing marketing quotas.*—The legislative history of the May 26, 1941, amendment [34] to the Agricultural Adjustment Act reveals that it was adopted in order to insure the workability of the wheat quota system. The amendment had been recommended by the Department of Agriculture when the establishment of a wheat quota program first became imminent and when the difficulties of administering and enforcing the Act providing for quotas only on wheat marketed became apparent.

The committee reports show that the object of the amendment of May 26, 1941, was to simplify

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[33] As to the power to adopt a plan which will be effective, see also pp. 37–43, *infra*.

[34] 55 Stat. 203, 7 U. S. C. (Supp. I) Sec. 1340.

the administration of the program and to avoid the "almost impossible task" of determining "the actual production and the actual marketings of the commodity on the farm." S. Rep. No. 143, H. Rep. No. 364, 77th Cong., 1st Sess. The House report states:

> It has become apparent that certain changes are needed in the farm marketing quota provisions of the Agricultural Adjustment Act of 1938, as amended, relating to corn and wheat, if marketing quotas should become effective for those commodities for the 1941–42 marketing year. The proposed resolution is designed to simplify the administration of marketing quota programs on corn and wheat and to enable farmers to make the quotas more effective in accomplishing the purposes of the act.
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> The resolution, in effect, provides for the determination of a farm marketing excess on corn and wheat and puts the marketing penalty on this excess of the commodity, regardless of whether it is actually marketed, *thereby making unnecessary the determination of the actual production and the actual marketings of the commodity on the farm.* * * * [Italics supplied.]

The Senate report declares:

> After considering the regulations which will be needed in the administration of the corn and wheat-marketing quota programs for the 1941–42 marketing year in the event that quotas become effective for that year,

the Department of Agriculture has advised this committee that the enforcement of the present provisions of the Agricultural Adjustment Act of 1938 will be extremely difficult. Under the present provisions of the act, the farm-marketing quota for corn or wheat is the actual production or the normal production, whichever is the larger, of the farm acreage allotment. It will be almost impossible to determine the actual production of corn or wheat produced on a farm, particularly where the producer is not participating in the farm program. The problem is also complicated by the fact that the marketing of corn or wheat as defined in the act includes the feeding to poultry or livestock which, or the products of which, are sold, bartered, or exchanged, or are to be so disposed of. *The proposed joint resolution (S. J. Res. 60) is designed to simplify the administration of marketing quotas on corn and wheat and to enable farmers to make the quotas more effective in accomplishing the purpose of the act.*

* * * * *

The redefining of the farm marketing quota is for the purpose of eliminating the necessity of determining the actual production of wheat or corn on each farm.

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The resolution in effect provides for the determination of a farm-marketing excess and puts the penalty on this excess of the commodity regardless of whether it is

> actually marketed, thereby making unnecessary the determination of the actual production of the commodity on the farm. [Italics supplied.]

There is no suggestion in the legislative history of the amendment that Congress intended to deviate in any way from the objectives of the original Act or do more than alter the details of the quota system in order to make it effective. The judgment of the legislature on such a practical question as the feasibility of a particular method of attaining a legitimate goal should be accorded the utmost respect. As long as the good faith of the legislative body in seeking to accomplish an end within its power is not challenged and the means chosen has some reasonable relationship to the attainment of that end, the exercise of legislative discretion should be upheld. See cases cited pp. 43–53, *infra*.

That the legislative conclusion as to the necessity of amending the Agricultural Adjustment Act was not arbitrary or without reasonable foundation cannot be doubted. Under the Act before the amendment, which prescribed quotas only for the quantity of wheat sold, the enforcing agency would have to keep track of the total quantity marketed by each farmer. To obtain such information it would be necessary, in view of the fact that wheat can be stored on the farm and disposed of at any time, to have permanent contact with each of the nearly 1,500,000 farms growing wheat

(R. 28) or with the thousands of local elevators, trucker-buyers, terminals and feed stores to whom the wheat is sold. Cf. R. 49–50.[25] Nor would it be feasible to ascertain the amount marketed by determining the amount produced and subtracting that consumed on the farm. Even when the acreage is known, the amount produced depends largely upon the vagaries of the weather. And it would obviously be even more difficult to learn with any degree of accuracy how many bushels were seeded and how many fed to livestock and poultry than to tell how much was marketed, particularly if the farmer was not completely cooperative.

If factual support for the congressional findings were otherwise lacking, it is supplied by the facts as stipulated in the record. This stipulation states that—"This diversified disposition of the farm production of wheat and the various methods of marketing make it difficult accurately to account for the actual amount, *as well as the final disposition,* of an individual farmer's wheat production" (R. 50). [Italics supplied.] "From the time wheat leaves the producer it usually cannot be traced as an individual shipment into the principal market channels" (R. 49).[26]

In these circumstances, it was proper for Con-

[25] The record shows that there are over thirty thousand local elevators alone (R. 50).

[26] In these respects wheat differs from tobacco and cotton, which are marketed through a relatively small number of channels. See p. 5, *supra.*

gress to establish a simpler and more enforceable method of controlling the wheat surplus and its harmful effect upon commerce. That aim is accomplished by the system of regulation provided for in the amended Act. All that need be known is the wheat acreage planted by the farmer and the normal yield per acre, figures which are commonly known to or easily ascertainable by the local committee or the agents of the Department. If a producer plants acreage in excess of his allotment, the normal production of that excess acreage constitutes the excess over his quota, unless he proves the actual production of such acreage to have been less, in which case only does the latter figure prevail.[27] Penalties are to be paid on all of the excess not stored or delivered to the Secretary, and the farmer can market none of his wheat until such penalties are paid. If he attempts to do so without a marketing card certifying that he has complied with the program, the buyer is required to pay the penalty, with a right to deduct it from the purchase price.[28]

[27] The Act specifically imposes upon the farmer the burden of proving to the satisfaction of the Secretary that the actual production was less than the normal production of the excess acreage. See Paragraph (3), Joint Res. of May 26, 1941, 55 Stat. 203, 7 U. S. C. (Supp. I), Section 1340 (3).

[28] Paragraph (8), Joint Res. of May 26, 1941, 55 Stat. 203, 7 U. S. C. (Supp. I), Section 1340 (8). See also U. S. Dept. of Agriculture, Agricultural Adjustment Administration, *Regulations Pertaining to Wheat Marketing Quotas for the 1941 Crop of Wheat*, Wheat-507, Part V.

The only objection urged against the plan prescribed by the May 1941 Amendment is that since it applies to all wheat it reaches that which is consumed on the farm—in other words, that it applies to intrastate transactions. It is not, and we believe that it cannot be, claimed that the plan is otherwise unreasonable. On the basis of the method of determining the farm acreage allotment prescribed by the Act (Sec. 334), the farm quota takes into account the total wheat acreage, including that grown to fill demands on the farm, and thus should provide ample wheat for normal farm consumption. Nor can it be claimed that the plan will not attain the ends sought, or that it is not more feasible and easy to administer and enforce than that which preceded it.

We submit that if a statute contains a reasonable method of achieving a legitimate object under the commerce clause, the fact that its impact falls upon intrastate transactions is entirely immaterial. Many cases testify to this.[20] The most recent illustration is *United States* v. *Wrightwood Dairy Co.*, 315 U. S. 110, 119, 121, wherein the Court declared:

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[20] *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1; *United States* v. *Darby*, 312 U. S. 100; *United States* v. *Wrightwood Dairy Co.*, 315 U. S. 110; *Oklahoma* v. *Atkinson Co.*, 313 U. S. 508; *Mulford* v. *Smith*, 307 U. S. 38; *Currin* v. *Wallace*, 306 U. S. 1; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1; *Stafford* v. *Wallace*, 258 U. S. 495; *Shreveport Case*, 234 U. S. 342; *Southern Ry. Co.* v. *United States*, 222 U. S. 20; *B. & O. R. Co.* v. *Interstate*

> * * * The commerce power is not confined in its exercise to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce, or the exertion of the power of Congress over it, as to make regulation of them appropriate means to the attainment of a legitimate end, the effective execution of the granted power to regulate interstate commerce. * * *
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> * * * It is the effect upon interstate commerce or upon the exercise of the power to regulate it, not the source of the injury which is the criterion of Congressional power. * * *

Since this doctrine is axiomatic, it is necessary to refer only to some of the situations in which it has been given effect because of difficulty in administering or enforcing a statute limited to interstate commerce alone. In *Currin* v. *Wallace,* 306 U. S. 1, *Mulford* v. *Smith,* 307 U. S. 38, and *United States* v. *New York Central R. R. Co.,* 272 U. S. 457, it would have been administratively impossible to segregate the products destined for interstate and intrastate shipment; accordingly, it was held that Congress could regulate all.

Commerce Commission, 221 U. S. 612; *Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U. S. 194; *United States* v. *New York Central R. R. Co.*, 272 U. S. 457; *Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295; *Local 167* v. *United States*, 291 U. S. 293; *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 484.

Under the Meat Inspection Act (34 Stat. 1260, 21 U. S. C., Secs. 71, 72, 78), federal agents examine animals in a factory during the production of meat as food, and require all unfit meat to be destroyed before it is known whether or not it is to move interstate. Although inspection might have been limited to meat ready for shipment in interstate commerce, considerations of administrative expediency were responsible for, and undoubtedly justify, the method long employed. Cf. *United States* v. *Lewis*, 235 U. S. 282; *Pittsburgh Melting Co.* v. *Totten*, 248 U. S. 1. Congress has power to prohibit the interstate movement of diseased livestock, or of livestock from infected areas. But the Federal Government need not wait at the point of shipment for animals sure to move in interstate commerce. In order that the interstate spread of disease may be controlled more effectively, compulsory inspection and dipping of *all* cattle in infected areas is permissible. *Thornton* v. *United States*, 271 U. S. 414; *Carter* v. *United States*, 38 F. (2d) 227 (C. C. A. 5), certiorari denied, 281 U. S. 753; cf. *United States* v. *Darby*, 312 U. S., at 121. Some of the cattle thus required to be inspected, like the wheat in question here, may be consumed on or never leave the farm or ranch on which they were raised. *United States* v. *Darby, supra*, sustained the validity of Section 15 (a) (2) of the Fair Labor Standards Act in part because the direct prohibition of

substandard labor conditions on goods produced for commerce served to effectuate the basic statutory policy of keeping such articles out of commerce. And Congress may build dams on non-navigable tributaries of a navigable river in order effectively to control floods on that river. *Oklahoma* v. *Atkinson Co.*, 313 U. S. 508, 525–526.

The same principle applies when control of intrastate acts will facilitate the *enforcement* of a commerce regulation. In *McDermott* v. *Wisconsin*, 228 U. S. 115, the Court held that the Food and Drugs Act permitted the Federal Government to seize misbranded goods while they remained unsold on a retailer's shelf, after interstate commerce had ceased and irrespective of whether they were still in original packages. This ruling invalidated a state law requiring a different label from the federal on such goods on the ground that it interfered with the enforcement of the federal statute.[30] The Court declared that (pp. 135–136):

> * * * Congress may determine for itself the character of the means necessary to make its purpose effectual in preventing the shipment in interstate commerce of articles of a harmful character * * *
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[30] The Court has also sustained the converse power of the states to regulate fish and wild game brought into the state from outside, in order to permit the enforcement of the state game laws. *Bayside Fish Co.* v. *Gentry*, 297 U. S. 422, 426; *Silz* v. *Hesterberg*, 211 U. S. 31, 39–40.

> * * * To make the provisions of the act effectual, Congress has provided not only for the seizure of the goods while being actually transported in interstate commerce, but has also provided for such seizure after such transportation and while the goods remain "unloaded, unsold, or in original unbroken packages." The opportunity for inspection en route may be very inadequate. The real opportunity of Government inspection may also arise when, as in the present case, the goods as packed have been removed from the outside box in which they were shipped and remain, as the act provides, "unsold." It is enough, by the terms of the act, if the articles are *unsold*, whether in original packages or not. Bearing in mind the authority of Congress to make effectual regulations to keep impure or misbranded articles out of the channels of interstate commerce, we think the provisions of § 10 are clearly within its power. Indeed it seems evident that they are measures essential to the accomplishment of the purpose of the act.

Ruppert v. *Caffey*, 251 U. S. 264, although arising under another of the enumerated powers, affords a striking example of the power of Congress to enforce its policies through control of conduct not within any granted power. That case upheld the War-Time Prohibition Act, as amended in October 1919[21] to forbid the sale and manu-

[21] The statute involved in the *Ruppert* case was enacted before the adoption of the Eighteenth Amendment.

facture of liquor containing only one-half of one percent alcohol and concededly non-intoxicating. The Act was based upon the war powers, and the subjection of non-intoxicants to the prohibition was justified by the difficulties in law enforcement which would arise if it were necessary to distinguish between liquor which was and liquor which was not intoxicating. The Court held that the Prohibition Act was valid as a means of increasing "war efficiency" and that the ban on unintoxicating liquor was a legitimate means of insuring the enforceability of the Act. The Court declared (pp. 299–301):

> * * * the implied war power over intoxicating liquors extends to the enactment of laws which will not merely prohibit the sale of intoxicating liquors but will effectually prevent their sale. * * *
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> * * * Since Congress has power to increase war efficiency by prohibiting the liquor traffic, no reason appears why it should be denied the power to make its prohibition effective.

The Court invoked a parallel doctrine as to the scope of state power under the due process clause, quoting from *Purity Extract Co.* v. *Lynch*, 226 U. S. 192, 201, as follows:

> * * * when a State exerting its recognized authority undertakes to suppress what it is free to regard as a public evil, it may adopt such measures having reasonable

> relation to that end as it may deem necessary in order to make its action effective. It does not follow that because a transaction separately considered is innocuous it may not be included in a prohibition the scope of which is regarded as essential in the legislative judgment to accomplish a purpose within the admitted power of the Government. * * *[32]

These cases show that the difficulties in administering and enforcing a quota system based entirely on the quantity of wheat marketed warrant resort to a plan which is enforceable, even though it requires the regulation of intrastate transactions.

Congress has the power to choose any means reasonably adapted to the attainment of a legitimate end under the commerce clause.—In the preceding sections of this brief we have attempted to state in detail the reasons why Congress has power under the commerce clause to control the entire supply of wheat, including that which may ultimately be used on the farm of the producer, and to point to principles and authorities showing that the plan adopted is valid. Since the power of Congress to control intrastate transactions in the exercise of its power over interstate commerce ultimately stems from the doctrine of implied powers and the

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[32] See, also, *Everard's Breweries* v. *Day*, 265 U. S. 545, 560; *Otis* v. *Parker*, 187 U. S. 606, 609; *Westfall* v. *United States*, 274 U. S. 256, 259; *St. John* v. *New York*, 201 U. S. 633.

"necessary and proper" clause,[33] our arguments have sought to give particular application to the basic rule as to the power of Congress to choose the means to carry out its enumerated powers. A more generalized approach to this fundamental principle may also be helpful.

The movement of a commodity across state lines and its price unquestionably constitute interstate commerce. It is entirely proper under the commerce clause for Congress to seek to control the amount which flows in commerce and the price structure. Cf. *Mulford* v. *Smith*, 307 U. S. 38; *United States* v. *Rock Royal Co-operative, Inc.*, 307 U. S. 533; *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381. The exercise of control over interstate flow and prices thus is a legitimate object of legislation under the commerce clause. It will, of course, not be denied that Congress has the power to choose the means to achieve such a legitimate end. The issue in this case is whether the particular means adopted is lawful.

The test to be applied in determining the validity of the means adopted by Congress has been stated time and again. In *United States* v. *Fisher*, 2 Cranch 358, 396, Chief Justice Marshall declared:

> * * * Congress must possess the choice of means, and must be empowered to use any means which are in fact *conducive* to

[33] Article 1, section 8, clause 18.

> the exercise of a power granted by the constitution. * * * [Italics supplied.]

These views were amplified shortly afterwards in *McCulloch* v. *Maryland,* 4 Wheat. 316, 409, 419, 421:

> The government which has a right to do an act, and has imposed on it the duty of performing that act, must, according to the dictates of reason, be allowed to select the means; and those who contend that it may not select any appropriate means, that one particular mode of effecting the object is excepted, take upon themselves the burden of establishing that exception.
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> * * * As little can it be required to prove, that in the absence of this clause, Congress would have some choice of means. That it might employ those which, in its judgment, would most advantageously effect the object to be accomplished. That any means adapted to the end, any means which tended directly to the execution of the constitutional powers of the government, were in themselves constitutional. * * *
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> * * * But we think the sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner

> most beneficial to the people. Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.[34]

The principle has often been invoked to sustain federal control of intrastate transactions under the commerce clause. See cases cited, *supra*, pages 37–41, and in particular the quotation from *United States* v. *Wrightwood Dairy Co.* on page 38.

In the present case there can be no doubt that the method adopted by Congress is reasonably calculated to attain the end of restricting the flow of wheat in interstate commerce and preventing a large surplus from forcing prices down to ruinous levels. The only contention that we anticipate may be made is that the same result could have been accomplished through control of marketing alone. We have previously shown that such a system would have been ineffective, and would not have provided a satisfactory method of achieving the statutory objective. But, even if another effective method of attaining the end sought had been available, this would not make unconstitutional the use of a concededly reasonable means.

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[34] See also *United States* v. *Darby*, 312 U. S. 100, 118; *Everard's Breweries* v. *Day*, 265 U. S. 545, 559; *Legal Tender Case*, 110 U. S. 421, 440.

The emphasis in the judicial descriptions of the applicable standard is on such words as "conducive,"[35] "appropriate,"[36] and "reasonably adapted."[37] The Court has never construed the Constitution as limiting Congress to the use of means indispensable to the accomplishment of an end. In *United States* v. *Fisher, supra,* Chief Justice Marshall first declared, with reference to the "necessary and proper" clause—

> * * * In construing this clause, it would be incorrect, and would produce endless difficulties, if the opinion should be maintained, that no law was authorized which was not indispensably necessary to give effect to a specified power. Where various systems might be adopted for that purpose, it might be said, with respect to each, that it was not necessary, because the end might be obtained by other means. Congress must possess the choice of means, and must be empowered to use any means which are in fact conducive to the exercise of a power granted by the constitution. * * *

And in *McCulloch* v. *Maryland* the great Chief Justice reaffirmed these views (4 Wheat. at 413–415):

> * * * Does it always import an ab-

[35] *United States* v. *Fisher; McCulloch* v. *Maryland,* both *supra.*

[36] *McCulloch* v. *Maryland; United States* v. *Wrightwood Dairy Co.; Everard's Breweries* v. *Day, supra.*

[37] *United States* v. *Darby, supra,* at 121.

solute physical necessity, so strong, that one thing, to which another may be termed necessary, cannot exist without that other? We think it does not. If reference be had to its use, in the common affairs of the world, or in approved authors, we find that it frequently imports no more than that one thing is convenient, or useful, or essential to another. To employ the means necessary to an end, is generally understood as employing any means calculated to produce the end, and not as being confined to those single means, without which the end would be entirely unattainable. * * *

* * * It must have been the intention of those who gave these powers, to insure, so far as human prudence could insure, their beneficial execution. This could not be done by confiding the choice of means to such narrow limits as not to leave it in the power of Congress to adopt any which might be appropriate, and which were conducive to the end. * * * To have declared that the best means shall not be used but those alone without which the power given would be nugatory, would have been to deprive the legislature of the capacity to avail itself of experience, to exercise its reason, and to accommodate its legislation to circumstances. * * *

The test has been summarized in the *Legal Tender Case* (110 U. S. 421, 440), as follows:

By the settled construction and the only

> reasonable interpretation of this clause, the words "necessary and proper" are not limited to such measures as are absolutely and indispensably necessary, without which the powers granted must fail of execution; but they include all appropriate means which are conducive or adapted to the end to be accomplished, and which in the judgment of Congress will most advantageously effect it.

See to the same effect, *Everard's Breweries* v. *Day, supra; First National Bank* v. *Union Trust Company*, 244 U. S. 416, 419.

The authority of the legislature to select appropriate means of carrying out its powers thus is broad enough to permit Congress to adopt one method even though another is available, and irrespective of whether a court might be of the opinion that the method not employed was superior or preferable.

This principle applies, of course, when Congress is seeking to achieve a legitimate object under the commerce clause through the control of intrastate transactions. See cases cited p. 37, *supra*. Congress is not compelled to adopt one method rather than another which it deems more effective merely because the former would reach only interstate transactions or a lesser number of intrastate transactions.[38] Thus Congress may properly provide

[38] A quota system limited to marketing and excluding wheat consumed on the farm would necessarily apply to a large number of intrastate as well as to interstate sales. Cf. *Mulford* v. *Smith*, 307 U. S. 38.

for the protection of navigation on navigable rivers through projects located on non-navigable tributaries, whether or not the same purpose could be achieved by construction further down stream; it is for Congress to decide which method is the more feasible. Cf. *Oklahoma* v. *Atkinson Co.*, 313 U. S. 508. If a dam is to be built for a legitimate commerce purpose, it is not improper for Congress to provide that its height may be greater than that strictly necessary for navigation or flood control in order that power may be utilized to aid in financing the work. Cf. *Oklahoma* v. *Atkinson Co.*, *supra*; *Arizona* v. *California*, 283 U. S. 423. Congress may provide for federal acquisition and operation of intrastate electric power lines from a dam lawfully built, even though the power might have been disposed of through lines privately controlled. *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 339–340.

United States v. *Darby* is closely in point, insofar as it upholds Section 15 (a) (2) of the Fair Labor Standards Act. The object of that statute was to keep goods produced under substandard labor conditions out of interstate commerce. Section 15 (a) (1) prohibits the interstate shipment of such goods; Section 15 (a) (2) regulates the hours and wages of employees producing goods for interstate commerce. Both were held constitutional. But only the provision relating to interstate shipments would have been valid if the power to control intrastate acts had been

limited to situations where no other method of achieving the desired end was available. Similarly, in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, the Court did not think it necessary to consider whether obstructions to commerce caused by strikes could be prevented by a regulation more closely pertaining to commerce itself. It was sufficient that there was a reasonable basis for the congressional conclusion that a law prohibiting unfair labor practices would tend to prevent disputes which would obstruct commerce. The cases upholding the regulation of intrastate acts affecting interstate prices, without regard to the possibility of direct federal control of the interstate price structure, are also corroborative. See pages 14–15, *supra*.

These cases are merely illustrative of the general doctrine permitting Congress to choose an effective, even if not the most direct, means of carrying out the powers granted to it. The cases demonstrate that, since choice of the means to an end is a legislative matter, the "judgment of Congress" (*Legal Tender Case, supra*) as to what means are reasonably related to the end is ordinarily to be deemed controlling. Thus in *Stafford* v. *Wallace*, 258 U. S. 495, at 521, and *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1, at 37, the Court declared:

> * * * Whatever amounts to more or less constant practice, and threatens to obstruct or unduly to burden the freedom of inter-

> state commerce is within the regulatory power of Congress under the commerce clause, and *it is primarily for Congress to consider* and decide the fact of the danger and meet it. This court will certainly not substitute its judgment for that of Congress in such a matter *unless the relation of the subject to interstate commerce and its effect upon it are clearly non-existent.* [Italics supplied.]

See also, *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 37; *Virginian Ry. Co.* v. *System Federation*, 300 U. S. 515, 553.

The test of appropriateness or reasonable relationship to the end sought to be attained is similar to that involved in determining the validity of legislation under the due process clause. Cf. *Nebbia* v. *New York*, 291 U. S. 502, 525–527; *Virginian Ry. Co.* v. *System Federation, supra*, at 553. This Court has recognized that when reasonableness is the test, the legislative judgment is not to be set aside as long as the statute has some "rational basis." *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152. "* * * by their very nature such inquiries, where the legislative judgment is drawn in question, must be restricted to the issue whether any state of facts either known or which could reasonably be assumed affords support for it." (*Id.*, at 154.) See, also, *O'Gorman & Young, Inc.* v. *Hartford Fire Insurance Co.*, 282 U. S. 251; *Metropolitan Casualty Insurance Co.* v. *Brownell*,

294 U. S. 580, 584, and cases cited. In the *Carolene* case the Court held that since the question as to the reasonableness of the legislation was "at least debatable," the finding of the Court could not be substituted for the decision of Congress. As the *Stafford* and *Olsen* cases, *supra*, show, substantially the same standard governs when the question is whether Congress has chosen an appropriate means of achieving a proper end under one of its granted powers.

We believe that not only is a quota system applicable to the entire wheat crop a reasonable means of accomplishing the legitimate congressional objective of controlling the amount of wheat marketed interstate and the interstate price level, but that no other method of attaining that end is feasible. We need not, however, sustain the burden of convincing the Court that the plan is the only possible one or even the best one. As this Court has frequently declared, legislation is to be sustained if the means chosen is appropriate or reasonably conducive to the accomplishment of the end. There can be no doubt that this test is satisfied. The cases hold that, if there should be a doubt, or if the question is debatable, the judgment of Congress is still to be accepted. Only if the basis for the congressional judgment is "clearly non-existent" would the Court be warranted in disregarding the congressional determination as to the means to be employed. Patently, no such conclusion can be reached here.

CONCLUSION

For these reasons it is respectfully submitted that the wheat-quota program contained in the Agricultural Adjustment Act of 1938, as amended, is a lawful exercise of the commerce power of Congress, as applied to the entire wheat supply, including the wheat which may be consumed on the farm.

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